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October 7, 2005 Ms. Jennifer J. Johnson Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, NW Washington, DC 20551 Docket No. R-1234 Dear Ms. Johnson: Bank of America Corporation, a diversified financial holding company headquartered in Charlotte, North Carolina, ("Bank of America") is pleased to have this opportunity to comment on the proposed amendments ("Proposed Rule") to Regulation E ("Regulation") and the Official Staff Commentary ("Commentary") as published in the Federal Register by the Federal Reserve Board ("Board"). Bank of America is one of the world's largest financial institutions, serving individual consumers, small businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The company provides unmatched convenience in the United States, serving 33 million consumer relationships with over 5,800 retail banking offices, 16,500 ATMs and award-winning online banking with more than thirteen million active users. Bank of America Corporation stock (ticker: BAC) is listed on the New York Stock Exchange. We strongly support the proposed revisions to the Regulation and the Commentary. We believe that the proposed revisions are fully consistent with sections 904(d)(3)(A) and (B) of the Electronic Fund Transfer Act ("EFTA"), which provide that an ATM operator that charges a consumer for Electronic Fund Transfer ("EFT") services must provide notice to the consumer indicating "that a fee is imposed" for the service in a prominent and conspicuous location on or at the ATM and through an ATM on-screen disclosure accompanied by the fee amount. We also urge the Board, when it adopts a version of the Proposed Rule as a final rule, to make it clear in the Supplemental Information accompanying the final rule that the revisions do not represent a

change in the ATM disclosure scheme, but merely a restatement and clarification of the requirements of existing law. **ATM FEE DISCLOSURE REQUIREMENTS** Existing section 205.16 requires a notice in a prominent location on or at an ATM “that a fee will be imposed for providing [EFT] services or a balance inquiry”. Similarly, existing Commentary section 205.16(b)(1)-1 states that an ATM operator “may provide a general statement that a fee will be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed”. However, an overly literal interpretation of these statements can create significant problems for both ATM operators and consumers. While conceptually it is possible for ATM operators to elect to impose fees in connection with all transactions or in connection with no transactions, as with many other large ATM operators, the actual practice of the Bank of America is much more complicated. In addition to not charging a fee for most transactions initiated with a credit or check card issued by Bank of America, from time-to-time we have entered into various agreements or elected to waive ATM fees for a variety of different consumers. For example, we currently waive fees for: 1. Customers of specified foreign banks that have entered into reciprocal fee waiving arrangements; 2. Persons who carry cards that are issued under specific governmental electronic benefit transfer programs; 3. Customers of non-affiliated card issuers (typically small savings banks) that have entered into special contractual relationships with Bank of America; and 4. Persons adversely affected by the recent hurricanes in Alabama, Louisiana, and Texas. Therefore, any statement posted on our ATMs stating that an ATM fee “will” be charged for all cards not issued by Bank of America would be inaccurate and potentially misleading. To address the inherent inaccuracy and potential misleading nature of such a categorical statement, we would need to add a qualifying statement listing all the exceptions to the general rule. Assuming such language is itself not a violation of the current Regulation E, the list of exceptions described above illustrates that the disclosure would be too lengthy and complex to be of any practical value to most consumers. Further, the requirement for such a detailed sign would be extremely expensive to implement. Even after initial implementation, the cost of changing the required notice on our over 16,500 ATMs would act as a disincentive to entering into additional fee waiving arrangements. For example, we estimate the cost of changing the notice on our over 16,500 ATMs would be more than \$1 million . Because of the above concerns, for many years Bank of America has posted on its ATMs a notice that use of other cards “may” result in a fee. When combined with the individualized on-screen disclosure also required by the Regulation, this has been successful in providing timely and meaningful disclosure to consumers.

**PROPOSED CLARIFICATION OF ATM FEE DISCLOSURE REQUIREMENTS** We believe that the language of proposed section 205.16(c)(1) is consistent with section 904(d)(3)(A) of the EFTA. Then Representative Marge Roukema (R-NJ), the sponsor of the ATM fee disclosure bill that was incorporated into the Gramm-Leach-Bliley Act (“GLBA”) and that amended section 904(d) of the EFTA, publicly stated that “Federal Reserve regulations and industry rules already require that [ATM] surcharges be disclosed. This bill simply puts existing practice into law. Since agency regulations and industry rules are subject to change, this sets a uniform standard that consumers will be able to count on.”\* At the time this requirement was enacted, many banks, including Bank of America, already notified consumers, through signage on or at the ATM, that a fee may be imposed, and more precisely informed the consumer through an ATM on-screen disclosure that specified the amount of the fee, if any, that actually would apply to the particular transaction before the consumer elected to proceed. Thus, proposed section 205.16(c)(1) is consistent with section 904(d)(3)(A) of the EFTA, as amended by the GLBA, and will serve to alert consumers of the possibility of a fee in advance of the more consumer-specific on-screen disclosures provided after a consumer inserts his or her card into the ATM card reader. We also believe that the current ATM disclosure scheme, as

clarified by the proposed revisions, adequately informs consumers of fees that may be imposed by ATM operators. Specifically, proposed section 205.16(c)(1) would provide that an ATM operator that may impose a fee on a consumer for initiating an EFT or a balance inquiry shall post on or at the ATM a notice providing that a fee “will be imposed” or a notice providing that a fee “may be imposed,” if there are some circumstances under which a fee will not be charged. In addition, under existing section 205.16(c)(2) of Regulation E, before the consumer is committed to paying an ATM fee, the ATM operator is required to provide notice that a fee will be imposed and the amount of that fee, either on the ATM screen or otherwise. Only after the consumer is provided with this combination of required notices, and the consumer elects to continue with the transaction or balance inquiry, may the ATM operator impose a fee. Sincerely, Daniel G. Weiss Associate General Counsel DGW/rts(736153) \* Press Release, Office of Congresswoman Marge Roukema, Banking Committee OKs Roukema ATM Fee Disclosure (Mar. 10, 1999) available at <http://financialservices.house.gov/banking/31099rou.htm>.